IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Government Appeal No. 1009 of 2001
(Old No. 2073 of 1981)

The State of U.P.

…… Appellant

Versus

1. Badamu

2. Sundru

Both R/o Village Jaspur,
Police Patwari Bajar gaon,
Tehsil Tehri Pratapnagar,
District Tehri Garhwal.

…… Respondents

Mr. H.C. Pande, A.G.A. for the appellant.
Mr. H.S. Rawal & Vikas Pande, Advocates for respondent No. 1.

Coram: **Hon'ble Rajeev Gupta, C.J.**
Hon'ble Prafulla C.Pant, J.

Dt: 01.05.2006.

Prafulla C. Pant, J. (Oral)

Mr. H.C. Pande, Assistant Government Advocate for the appellant State.

Mr. H.S. Rawal, Advocate for respondent No. 1.

Mr. H.S. Rawal, amicus curiae for respondent No. 2.

1) This appeal, preferred under Section 378 of the Code of Criminal Procedure, 1973, is directed against the judgment and order dated 15.06.1981, passed in Sessions trial No. 04 of 1981, by the then, learned Sessions Judge, Tehri Garhwal, whereby the accused respondents were acquitted of the charge of the offence punishable under Section 302 of the Indian Penal Code, 1860.

2) The prosecution story, in brief is that on 31st October, 1980, in the morning, both accused Badamu and Sundru came to the house of deceased Prithvi Singh. Prithvi Singh (deceased) asked his wife Shanti Devi (P.W.2) for money to purchase a pair of bullocks. She handed over the money kept with her wrapped in a handkerchief. Deceased along with both the accused went from the house to purchase the bullocks. P.W. 3, Sabbal Singh, a pony keeper saw all the three at about 2:30 P.M. coming from the side of Nagun. P.W. 5, Niranjan Pal, Junior Engineer of Irrigation Department, after sometime, noticed deceased lying in injured state near the bank of river Domansarot. He with the help of P.W.6, Ram Singh, Beldar called for the Patwari and the Doctor.

4 Dr. D.P. Bahuguna (P.W.1), examined the injury on the person of Prithvi Singh and recorded the following injuries:

i) Incised injury on head frontal region measuring 6 X 3 cm.

ii) Minor injury on nose and right hand.

iii) Coma +ve

iv) Bleeding from head injury. +ve

The document containing recording of above injuries is recorded as Ext. Ka. 1 on the record. Ram Singh (P.W.6), got the first information report (Ext. Ka 3) recorded with patwari (In Uttaranchal hills patwaris are given police powers, including power to investigate crimes). The Patwari along with Ram Singh went to the site and took prithvi Singh to Dr. D.P. Bahuguna (P.W.1), who referred him to Civil Hospital Tehri. In the Civil Hospital, the doctors declared Prithvi Singh dead.

4) The Postmortem examination on the body was conducted by Dr. M.S. Panwar, who recorded following ante mortem injuries on the person of the deceased:

i) ***Lacerated wound 6 cm X 3 cm, bone deep on the right temporal region 6 Cm above the upper end of right ear. On opening the wound temporal bone found fractured in 4 cm X 4 cm area. Bone piece is depressed in the brain mater. On lifting the bone piece, the membrane of brain found congested with multiple haemorhajic patches. The brain basin is also depressed. Under the depressed bone with haemorhajic patches.***

ii) ***Abrasion 3 cm X 2 cm above the tip of nose, clotted blood present on the abraised part..***

iii) ***Lacerated wound 2 cm X 1 cm X ½ cm inner side of right upper lip of mouth. Clotted blood present over the teeth.***

iv) ***Multiple abrasion size 4 cm X 3 cm on the left elbow.***

v) ***Abrasion 6 cm X 3 cm linear in direction on the inner side of left forearm.***

vi) Abrasion 6 cm X 3 cm on the right elbow prominence.

vii) Abrasion 2 cm X 1 cm on the back of right upper arm. 2 cm below the right shoulder joint.

viii) Abrasion 1 cm X 1 cm above the L-4 vertebrae.

In the Post Mortem Report death was recorded by Dr. Panwar to have been caused due to fracture of skull bone causing brain damage.

5) Bhairav Dutt (P.W.9), Patwari investigated the crime and recorded the statement of Dr. D.P. Bahuguna (P.W. 1); Shanti Devi (P.W.2), wife of the deceased; Sabbal Singh (P.W. 3), a pony keeper; Ghanshyam Dutt (P.W. 4), who saw Badamu in the suspicious condition after the incident; Niranjan Pal (P.W. 5), Junior Engineer; Ram Singh (P.W. 6), Beldar; Dr. M.S. Panwar (P.W. 7); Prem Das (P.W. 8), an eye witness and one Kamal Singh (who was later on examined as court witness) and submitted charge sheet against the accused Badamu and Sundru. The learned judicial Magistrate Ist Class, Tehri, after giving necessary copies to the accused person, committed the case to the court of Sessions on 08.01.1981, for trial of the accused on charges of the offence punishable under Section 302/109 of the I.P.C. After hearing the parties, only charge under Section 302 was framed against both the accused persons, who pleaded not guilty and claimed to be tried.

6) Learned Sessions Judge got recorded the statements of the aforesaid witnesses including the court witness, Kamal Singh (C.W. 1) and Bhairav Dutt, Investigating Officer (P.W. 9). The trial court put the entire evidence,

oral as well as documentary, to the accused persons under Section 313 of the Code of Criminal Procedure, 1973, and after giving them opportunity to adduce evidence in defence, and hearing the parties, delivered the impugned judgment, whereby he found both the accused not guilty. Aggrieved by said judgment and order, this appeal has been preferred by the State.

7) The appeal was originally filed before the Allahabad High Court where the leave was granted and the appeal was admitted. This Court received this appeal by transfer under Section 35 of the U.P. Re-organization Act, 2000.

8) We heard learned counsel for the parties and perused the entire evidence on record.

9) In the first information report (Ext. Ka 3), accused are not named as it was not lodged by any eyewitness. Dr D.P. Bahuguna (P.W. 1), who examined the injuries on the person of the deceased before his death proved the injury report (Ext. Ka. 1). Dr. M.S. Panwar (P.W.7) is the medical officer who conducted the postmortem examination on the dead body of the deceased Prithvi Singh and has proved Ext. Ka. 2. The first witness, who named the accused persons, narrating the circumstance is Shanti Devi (P.W. 2), wife of the deceased, who stated before the trial court that her husband left the house along with accused Badamu and Sundru, in the morning, after taking money from her to purchase a pair of bullocks. Sabbal Singh (P.W.3), a pony keeper, has supported the prosecution story to the extent that he also saw accused

Sundru and Badamu going with Prithvi Singh on the date of incident at about 2:30 P.M. to 3:00 P.M. This witness further states that he saw them quarrelling, but he did not see accused persons committing murder of Prithvi Singh. Ghanshyam Dutt (P.W.4) has stated only this that he saw accused Badamu running near his house in suspicious circumstances. Niranjan Lal (P.W. 5), a Junior Engineer in the Irrigation Department has stated that he saw Prithvi Singh in an injured condition after the incident, near canal of river Damansarot. Ram Singh (P.W. 6) also corroborates said fact and he went to call the doctor and when he didn't meet the doctor he called the Patwari. The only witness alleged to be eyewitness is Prem Das (P.W. 8), who states that he saw accused persons grappling with Prithvi Singh. He further states that he saw accused Badamu pushing Prithvi Singh from a hillock towards a gorge. But this witness belongs to village Silgaon. In the cross-examination, this witness failed to disclose the date and year of the incident. As to the purpose for which he was passing through the place of incident he says that he was going to his brother. Then, he further adds that he has no work with the brother and he was simply going to meet him. This witness admits that the distance of place of occurrence from his village is about 6-7 miles. The most important factor, which raises doubt about the statement made by him is that this witness knew the deceased and still did not go to the village of the deceased nor got informed his wife. He failed to give any explanation for this unnatural conduct on his part. Not only this, this witness is the cross-examination states that he met some

other people on the way but did not disclose to anyone about the incident. In view of these facts, the trial court found his statement not reliable. In our opinion, for the reasons as discussed above, the trial court has committed no error of law or that of fact in appreciating the evidence on the record. We are in agreement with the learned trial court that Prem Das (P.W.8) is mere chance witness and only his natural conduct could have made his statement reliable, in the circumstances of the case.

10) Motive is not relevant where there is direct eye account of the incident. But where there is circumstantial evidence, motive does not lose its importance. There is no enmity alleged by the prosecution between the accused and the deceased. As to the motive of the crime, it is suggested by prosecution, that the accused had intention to rob the money which the deceased has taken from his house, but that does not get established beyond reasonable doubt. Statement of Shanti Devi (P.W.2), who had stated that she had given money to the deceased before he left with the accused persons to purchase a pair of bullocks, failed to tell what was the amount she gave to her husband. There is no recovery of money from either of the accused respondents. In the circumstances, though it is proved on the record that Prithvi Singh Died due to the head injury received by him on the date of incident, it is not proved beyond reasonable doubt that the death was caused by either or both of the accused respondents. As far as the statement of other prosecution witnesses is concerned, that does not complete the necessary chain required for providing the charge.

11) In the circumstances and reasons, as discussed above, we see no reason to interfere with the impugned judgment and order, whereby the respondents Badamu and Sundru are acquitted by the trial court. Accordingly, the appeal is dismissed. The respondent Badamu, who is in jail after the execution of warrant issued by this Court, be set at liberty, if not required in any other crime.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**

Dt. 1st of May, 2006.
H. Negi